IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

Criminal Appeal No. 821 of 2003

Shri Mahedeo Pandharinath Kate ..Appellant.

vs.

1. M/s Kate Developers &
Contractors and ors. ..Respondents

Shri Sushil Nimbkar for applicant.
Shri S.P.Kadam for respondent nos. 1 to 3.

CORAM: A.M.KHANWILKAR J.
29th NOVEMBER, 2005

P.C.

. Heard counsel for the parties.

2. Admit. By consent appeal heard forthwith as short question is involved in the present appeal.

3. This appeal takes exception to the order passed by J.M.F.C., dated 3rd April, 2003 in STCC no.1556 of 2002 whereby the complaint filed by the appellant has been rejected for default. The court has noted that on the earlier occasion the matter has been adjourned from time to time but the complainant has not shown keenness to produce and/or record the evidence. To that extent the observations of the lower court may be correct. However, perusal of the roznama right from the inception i.e. from the date of complaint - 16th

July, 2002 till 3rd April, 2003- it is noticed that the complainant and his advocate were present on all the relevant dates except on 3rd April, 2003 when the complaint came to be dismissed for default. From the roznama it is not clear whether all those adjournments were sought by the appellant. The basis on which the court has opined that the appellant was unwilling to produce evidence cannot be discerned from the record as it stands. In any case in the interest of justice in my view the appeal should succeed. The impugned order is set aside and the complaint is restored to file of the trial Court. The Trial Court is directed to decide the said complaint on its own merit in accordance with law. This indulgence is shown on the assurance given by the complainant through his counsel before this court that the complainant will keep all witnesses present on the date notified by the trial court and proceed with the recording of evidence without seeking even a single adjournment on any count. In addition the appellant shall pay cost to respondent no.1 in the present proceedings quantified in the sum of Rs.3000/- within two sweeks from today as condition for restoring the complaint to the file

of the trial Court. Appeal is allowed on the above terms. Order accordingly.